

SPECIAL CIVIL APPLICATIONS  
No. 238, 239, 240 and 389 of 1997

Date of decision: 23.4.1997

For approval and signature

Honourable Mr. Justice R. R. Jain

Mr. Anant S. Dave, advocate for petitioners in all the matters.

Mr. H. M. Bhagat, advocate for respondents No.1 to 3.

Mr. Navin Pahwa for M/s. Thakkar Associates for respondent No.4.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: R.R.Jain,J.

April 23, 1997.

Common Oral judgment:

Since all the above matters involve identical question of law and facts, they are disposed of by this common judgment. For the sake of convenience, documents produced with Special Civil Application No. 238 of 1997

are referred hereinafter.

On the face, it appears that the petition is misconceived for the simple reason that the petitioner has proceeded on the assumption that he is required to shift the site whereas in fact vide impugned notice, Annexure A dated 26.12.1996, the petitioner has been simply requested to confine his possession of the land as per boundaries shown in the map annexed with the lease deed. It appears that the petitioner is in possession of land beyond boundaries shown in the map. It further transpires that just next to the area granted to the petitioner, respondent No.4 has also been granted lease and boundaries have been shown in the map annexed thereto. But it appears that petitioner has occupied beyond the boundaries, the land allotted to respondent No.4 now the boundaries overlap if respondent No.4 is given possession according to his lease deed. Facing this difficulty respondent No.4 requested Government to demarcate boundaries and give possession. In this background, Government initiated appropriate proceedings and requested the petitioner to confine possession to the boundaries described in the lease deed and map annexed thereto. In my view, such a request made by appropriate authority, would not be arbitrary, unlawful, unjust or illegal. The move can also not be treated as shifting of site. On the contrary, it reflects upon conduct of the petitioner who does not want to abide by the contractual obligations and remains contented with legal entitlement. Under the guise of this petition, the petitioner is trying to usurp the legal rights of respondent No.4 and to perpetuate unlawful and illegal act. This Court would not like to exercise writ jurisdiction in favour of dishonest petitioner who does not come with clean hands for claiming lawful rights.

The petition has been filed projecting that the respondent authority has directed the petitioner to shift from one place to another. If that be so the petitioner was right in invoking jurisdiction of this Court. However, as discussed above, the petitioner has not been requested to shift but directed to restrict possession as per boundaries, described in lease deed. Hence question of violation of fundamental rights or arbitrariness does not arise. Consequently, the petition has no merits and does not require acceptance.

Before parting with the judgment, it would be worthwhile to state that keeping in mind the controversy and with a view to find out amicable solution, with the consent of parties, Court Commissioner was appointed to visit the

site, and demarcate the boundaries of the area granted to each of the petitioner as well as respondent No.4. Mr. A.K. Trivedi, In-charge Geologist, Mineral Exploration Circle, Office of the Senior Geologist, Rajkot visited the site as Commissioner in pursuance of the order passed by this Court. But, I am sorry to say that the petitioners did not allow the Commissioner to carry out the directions of this Court and complete local inspection. The only inference can be drawn is that petitioner did not want to demarcate the boundaries as would show the extent of encroachment and would be required to vacate. This suggests that petitioner has no respect or regard for Court's order. This also reflects upon dishonesty and ulterior motive of the petitioner who does not want to leave the area which have been encroached upon by him beyond the dimensions shown in map and leased.

The Commissioner appointed by this Court is discharging functions for and on behalf of the Court. Any interference in discharge of his function tantamounts to interference with judicial function and taking a strict view this would fall within the provisions of the Contempt of the Court as defined in Section 2 (c) of the Contempt of Courts Act. However, in view of the unconditional apology tendered in the affidavit filed today and taking liberal view no further actions are proposed.

With these observations, all the petitions are dismissed. Rule is discharged. Interim relief, if any, stands vacated. There shall be no order as to costs.